

# Order

Michigan Supreme Court  
Lansing, Michigan

December 21, 2010

Marilyn Kelly,  
Chief Justice

ADM File No. 2010-05

Michael F. Cavanagh  
Maura D. Corrigan  
Robert P. Young, Jr.  
Stephen J. Markman  
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Justices

Proposed Amendment of  
Rules 2.112, 7.206, and 7.213  
of the Michigan Court Rules

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On order of the Court, this is to advise that the Court is considering amendment of Rules 2.112, 7.206, and 7.213 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter also will be considered at a public hearing. The notices and agendas for public hearings are posted on the Supreme Court's website at the following address: [www.courts.michigan.gov/supremecourt/Resources/Administrative/ph.htm](http://www.courts.michigan.gov/supremecourt/Resources/Administrative/ph.htm).

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[Additions are indicated by underlining and deletions are indicated by strikeover.]

## Rule 2.112 Pleading Special Matters

(A)-(L) [Unchanged.]

(M) Headlee Amendment Actions. In an action brought pursuant to Const 1963, art 9, § 32, alleging a violation of Const 1963, art 9, §§ 25-34, the pleadings shall conform to the requirements of MCR 2.111~~factual basis for the alleged violation or a defense must be stated with particularity. In an action involving Const 1963, art 9, § 29, the plaintiff must state with particularity the type and extent of the harm and whether there has been a violation of either the first or second sentence of that section. In an action involving the second sentence of Const 1963, art 9, §29, the plaintiff must state with particularity the activity or service involved. All statutes involved in the case must be identified, and copies of all ordinances and municipal charter provisions involved, and any available documentary evidence supportive of a claim or defense, must be attached to the pleading. The parties may supplement their pleadings with additional documentary evidence as it becomes available to them.~~

(N) [Unchanged.]

Rule 7.206 Extraordinary Writs, Original Actions, and Enforcement Actions

(A)-(C)[Unchanged.]

(D) Actions for Extraordinary Writs and Original Actions.

- (1) Filing of Complaint. To commence an original action, the plaintiff shall file with the clerk:
  - (a) for original actions ~~filed under Const 1963, art 9, §§ 25-34~~, 5 copies of a complaint (one signed) ~~that conforms to the special requirements of MCR 2.112(M), and~~, which indicates whether there are any factual questions that must be resolved; for all other extraordinary writs and original actions, 5 copies of a complaint (one signed), which may have copies of supporting documents or affidavits attached to each copy;
  - (b) 5 copies of a supporting brief (one signed) conforming to MCR 7.212(C) to the extent possible;
  - (c) proof that a copy of each of the filed documents was served on every named defendant and, in a superintending control action, on any other party involved in the case which gave rise to the complaint for superintending control; and
  - (d) the entry fee.
- (2) Answer. The defendant or any other interested party must file with the clerk within 21 days of service of the complaint and any supporting documents or affidavits:
  - (a) for original actions ~~filed under Const 1963, art 9, §§ 25-34~~, 5 copies of an answer to the complaint (one signed) ~~that conforms to the special requirements of MCR 2.112(M), and~~ which indicates whether there are any factual questions that must be resolved; for all other extraordinary writs and original actions, 5 copies of an answer to the complaint (one signed), which may have copies of supporting documents or affidavits attached to each copy;
  - (b) 5 copies of an opposing brief (one signed) conforming to MCR 7.212(D) to the extent possible; and

- (c) proof that a copy of each of the filed documents was served on the plaintiff and any other interested party.

(3) [Unchanged.]

(E) Actions to Enforce the Headlee Amendment, Pursuant to Const 1963, art 9, § 32.

(1) Filing of Complaint. To commence an action pursuant to Const 1963, art 9, § 32, the plaintiff shall file with the clerk:

- (a) 5 copies of the complaint (1 signed) which indicates, inter alia, whether there are any factual questions that are anticipated to require resolution by the court;
- (b) proof that a copy of each of the filed documents was served on every named defendant and the office of the attorney general; and
- (c) the entry fee.

(2) Answer. The named defendant(s) shall file with the clerk within 21 days of service of the complaint:

- (a) 5 copies of an answer to the complaint (1 signed) which indicates, inter alia, whether there are any factual questions that must be resolved by the court from the defendant's perspective.
- (b) proof that a copy of each of the filed documents was served on every named plaintiff.

(3) Subsequent proceedings. Following receipt of the answer:

- (a) the chief judge shall promptly assign a panel of the court to commence proceedings in the suit;
- (b) the suit may be referred by the panel of the court to a special master for purposes of pretrial proceedings, conducting a trial to receive evidence and arguments of law, and issue a written report for the court setting forth findings of fact and conclusion of law. The proceedings before the special master shall proceed as expeditiously as due consideration of the facts and issues of law requires;

- (c) if the panel of the court determines that the issues framed in the parties' pleadings solely present questions of law, the court may elect not to refer the suit to a special master; and
- (d) following receipt of the report from the special master or upon the panel electing not to refer the suit to a special master, the court shall notify counsel for the parties of the schedule for filing briefs in response to the special master's report or based on the issues framed in the pleadings and setting the date for oral argument, which shall be on an expedited basis. The proceedings shall take precedence over other nonemergency matters pending before the court.

~~(E)~~(F) [Former (E) has been relettered as (F), but otherwise is unchanged.]

#### Rule 7.213 Calendar Cases

(A)-(B)[Unchanged.]

- (C) Priority on Calendar. The priority of cases on the session calendar is in accordance with the initial filing dates of the cases, except that precedence shall be given to:
  - (1) interlocutory criminal appeals;
  - (2) child custody cases;
  - (3) interlocutory appeals from the grant of a preliminary injunction;
  - (4) appeals from all cases involving election issues, including, but not limited to, recall elections and petition disputes;
  - (5) appeals of decisions holding that a provision of the Michigan Constitution, a Michigan statute, a rule or regulation included in the Michigan Administrative Code, or any other action of the legislative or executive branch of state government is invalid; ~~and~~
  - (6) actions brought under sections 29-34 of the Michigan Constitution (Headlee actions); and
  - (7) cases that the court orders expedited.

(D)-(E)[Unchanged.]

Staff Comment: The proposed amendments of MCR 2.112 and MCR 7.206 were submitted by the Legislative Commission on Statutory Mandates as a way to increase the efficiency with which Headlee actions are considered and disposed in Michigan courts, and to regularize the procedures that relate to Headlee proceedings. The proposed amendment of MCR 7.213 was added to the proposal as a corollary to proposed MCR 7.206 to clarify the prioritization of cases.

The staff comment is not an authoritative construction by the Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on these proposals may be sent to the Supreme Court Clerk in writing or electronically by April 1, 2011, at P.O. Box 30052, Lansing, MI 48909, or [MSC\\_clerk@courts.mi.gov](mailto:MSC_clerk@courts.mi.gov). When filing a comment, please refer to ADM File No. 2010-05. Your comments and the comments of others will be posted at [www.courts.mi.gov/supremecourt/resources/administrative/index.htm](http://www.courts.mi.gov/supremecourt/resources/administrative/index.htm).



I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

December 21, 2010

*Corbin R. Davis*  
Clerk